

## NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2010-0704-01 EE</b>
For use by Office of Administrative Law (OAL) only			
		2010 JUL -6 PM 3:05 OFFICE OF ADMINISTRATIVE LAW	
NOTICE		REGULATIONS	

## AGENCY WITH RULEMAKING AUTHORITY

California Pollution Control Financing Authority per agency file

AGENCY FILE NUMBER (if any)

## A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER		PUBLICATION DATE

## B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Extension of previously adopted CPCFA emergency regulations	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) <b>2010-0423-01 EE</b> 2009-1005-01E, 2009-1020-02ER, 2010-0421-01EE
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## 2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND Title 4, Division 11, Article 3, Sections 8034,8035; Title 4, Division 11, Article 4, Sections 8042,8043
	REPEAL
TITLE(S)	

## 3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)		<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Other (Specify) _____	

## 4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

## 5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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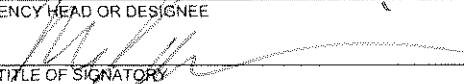
## 6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Samantha Russell	TELEPHONE NUMBER (916) 654-6061	FAX NUMBER (Optional) (916) 657-4821	E-MAIL ADDRESS (Optional) srussell@treasurer.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE July 6 2010
TYPED NAME AND TITLE OF SIGNATORY Michael Paparian, Executive Director	

## Regulatory Changes

Title 4, Division 11 is amended to read:

### § 8034. General Fees.

*Addition of a new annual fee category. Any bond issued that is not eligible for allocation of volume cap will be assessed a fee of one tenth of one percent (.001) of the face value of the bonds issued, and then an annual fee of five one-hundredths of one percent (.0005) of the outstanding balance yearly (minimum annual fee of \$1,000 and a maximum annual fee of \$75,000).*

The Authority charges ~~a fee~~ the following fees for reasonable and necessary administrative and program expenses connected with the sale of bonds:

(a) Where the financing requested is not eligible for allocation of volume cap pursuant to 26 U.S.C. Section 146, the Authority charges a fee for reasonable and necessary administrative and program expenses connected with the sale of the bonds. For an applicant who is not a small business as defined in Section 8020, the fee shall be one tenth of one percent (.001) of the face value of the bonds issued. In addition, the Authority will charge an annual fee each year for the life of the financial assistance in the amount of five one-hundredths of one percent (.0005) of the remaining balance of the financial assistance, with a minimum annual fee of \$1,000 and a maximum annual fee of \$75,000.

(b) In all other financings, the fee shall be two tenths of one percent (.002) of the face value of the bonds issued.

(c) The applicant shall also reimburse the Authority for all reasonable and necessary out of pocket expenses which the Authority may incur at the applicant's request and all other expenses direct or indirect, properly allocable to the proposed financing. Unless paid out of the proceeds of the bonds issued, all fees for a particular proposed financing shall be paid by the applicant and deposited in the Authority Fund. The Authority shall be authorized to use general fees deposited in the Authority Fund to support Authority programs, including, but not limited to, the Capital Access Loan Program authorized by Article 7 of this Division 11.

Note: Authority cited: Section 44520, Division 27, Health and Safety Code. Reference: Sections 44520, 44525 and 44537.5, Division 27, Health and Safety Code.

### § 8035. Small Business Assistance Fund Fees.

*The proposed change to this section reduces the current maximum SBAF fee from one percent (.01) to sixty-six one-hundredths of one percent (.0066) of the face value of any tax exempt bonds issued.*

(a) The Authority shall charge an applicant who is not a small business as defined in Section 8020 a fee in addition to the fees required by Sections 8033 and 8034. The additional fee shall fund the Small Business Assistance Fund (SBAF). The amount of the fee shall be sixty-six one-hundredths of one percent (.0066) of the face value of any tax exempt bonds issued and three tenths of one percent (.003) of the face value of any taxable bonds issued; provided, that in connection with the issuance of taxable bonds for which the .003 fee is charged, if such taxable bonds are refinanced with or converted to tax exempt bonds, the applicant shall pay an additional fee for deposit into the Small Business Assistance Fund in the amount of seven tenths thirty-six one hundredths of one percent (.007 .0036) of the face value of such taxable bonds. In the case of refunding or conversion of bonds, the fee percentage applicable on the date

the original bonds were issued will be used to determine if additional SBAF fees are collectable. If the company did not pay a SBAF fee originally, the current fee percentage will apply to refundings or conversions. If federal tax law or other legal provisions prevent the imposition of the above fees, each fee shall be the maximum that can legally be charged.

(b) The Authority shall refund a portion of the fee charged pursuant to subdivision (a) of this section if the occurrence of a subsequent event causes the original fee to exceed the amount allowed by federal tax law provisions, causing the bonds to lose their tax exempt status. The refund shall be the difference between the original fee charged and the maximum fee subsequently determined to be chargeable by bond counsel approved by the Authority.

(c) The Authority shall refund a portion of the fee charged if, in the judgment of the Authority, the amount in the Small Business Assistance Fund account exceeds the amount needed to operate the Small Business Assistance Fund program and to assist small businesses obtain financing. If the Authority makes a refund pursuant to this subdivision, the amount of the refund payable to each applicant shall be computed by multiplying the total amount to be refunded by the percentage each applicant contributed in fees to the total fees collected pursuant to this section.

(d) If an applicant refinances existing bonds with the issuance of new bonds, it shall receive a credit against the fee charged pursuant to this section in an amount equal to the net Small Business Assistance Fund fees paid on the earlier bonds.

Note: Authority cited: Section 44520, Division 27, Health and Safety Code. Reference: Section 44548, Division 27, Health and Safety Code.

#### **§ 8042. Eligibility for Assistance.**

*Addition of a section defining the types of projects that small businesses will now be required to pay the annual fee under Section 8034 – General Fees.*

(a) An applicant, to be eligible for assistance, shall meet the following criteria:

- (1) It shall be a small business as defined in Section 8020.
- (2) It shall seek financing for a project that complies with the Act (commencing with Health and Safety Code Section 44500).
- (3) In connection with assistance in accordance with Section 8043 of this article, it shall seek financing that is no less than \$500,000.
- (4) It shall demonstrate a financial capability to make debt service payments and shall provide such collateral security (in the form of deeds of trust, security agreements, reserves, third party guarantees or other methods) as may be required by the holders of the bonds, the lender in a conventional loan, and the Authority as guarantor.

(b) An applicant shall receive assistance, provided sufficient funds are available, when the following conditions are satisfied:

- (1) The Authority has accepted the applicant's request for financing pursuant to Section 8032.

(2) The Authority has determined that the applicant is eligible pursuant to subdivision (a) of this section.

(3) The Authority issues bonds to finance the applicant's project or the Authority approves a guarantee of a conventional loan which will finance the applicant's project.

(c) This section shall not apply where the financing requested is not eligible for the allocation of volume cap pursuant to 26 U.S.C. Section 146.

Note: Authority cited: Section 44520, Division 27, Health and Safety Code. Reference: Section 44548, Division 27, Health and Safety Code.

#### **§ 8043. Assistance.**

*Clarification of eligibility related to Section 8042. Projects submitted by eligible small businesses that are not eligible for volume cap allocation would be required to pay general fees, as outlined in Section 8034 (a).*

In addition to other assistance which the Authority shall be authorized to provide in accordance with this division:

(a) The Authority shall be authorized to provide any part or combination of the assistance described below, but the Authority shall not be required to provide any particular form of assistance to any applicant. The Authority shall be authorized to provide the form or forms of assistance that, in its judgment, will most effectively assist the applicant to (i) achieve financing for the project; (ii) obtain a bond rating of "A" from a national bond rating service if bonds are issued publicly; and (iii) obtain an effective interest rate for all or a portion of the term of the financing which, in the Authority's judgment, is comparable at the time of financing to the prevailing market rates which would be paid by larger businesses for similar types of financing (but for any conventional loan not lower than the "prime rate" then prevailing):

- (1) Pay for the reasonable costs of issuing bonds or obtaining conventional loans. For bond issues, these costs include bond counsel fees, underwriter or placement agent fees or discount and related expenses, printing fees, fees to due to other state agencies, accounting fees, consultant's fees, and other expenses directly related to the issuance of bonds that are normally paid from the proceeds of a bond issued at the time of closing. For conventional loans, these costs include counsel fees, loan origination fees, consultant's fees, and other costs normally incurred in obtaining a commercial loan. The costs of issuing bonds or obtaining conventional loans shall not include expenses incurred by the applicant for other attorney fees, staff time, or other expenses related to the application for financing.
- (2) Provide financial assistance to reduce the annual fees or premium for a letter of credit, surety bond, insurance policy, or other credit enhancement.
- (3) Guarantee to the bond holder, conventional lender or provider of a letter of credit, surety, insurance policy, or other credit enhancement all or a portion of the indebtedness; provided, however, that in no event shall the aggregate amount of such guarantees outstanding at any time with respect to any applicant exceed \$2,000,000.
- (4) Provide financial assistance to reduce the interest rate on conventional loans or bonds by not more than two percent (2%).

(b) The Authority shall waive the fees it charges pursuant to Section 8034 for all applicants meeting the conditions contained in Section 8042~~41~~.

(c) The Authority alone is authorized to approve assistance. The commitment to provide assistance shall be valid only when it is included in a written contract executed by both the Authority and applicant or group of applicants.

Note: Authority cited: Section 44520, Division 27, Health and Safety Code. Reference: Section 44548, Division 27, Health and Safety Code.

## **FINDING OF EMERGENCY**

### **CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY**

Title 4, Division 11

#### **Finding of Emergency**

Pursuant to Section 44520(b) of the Health and Safety Code, the regulations being amended herewith by the California Pollution Control Financing Authority (the "Authority") as emergency regulations (the "Emergency Regulations") are, by legislative mandate, necessary for the implementation of small businesses assistance and the immediate preservation of the public peace, health and safety, and general welfare.

#### **Necessity**

These Emergency Regulations are necessary to implement, interpret and make specific Articles 3 and 4 of the California Pollution Control Financing Authority Act (the "Act").

#### **Authority and Reference**

Authority: Sections 44520(a), 44520(b), 44525(a) and 44548(a)(2), Health and Safety Code. Section 44520(b) of the Act authorizes the Authority to adopt regulations relating to small business financing as emergency regulations and instructs the Office of Administrative Law to consider such regulations to be "necessary for the immediate preservation of the public peace, health and safety or general welfare." Sections 44520(a), 44525(a) and 44548(a)(2) of the Act authorize the Authority to adopt necessary regulations to charge reasonable application and project fees to reimburse the Authority for costs incurred in administering applications for financing.

Reference: Sections 44525(a) and 44548(a)(2) of the Health and Safety Code. These Emergency Regulations implement, interpret and make specific Sections of the Act by amending Sections 8034 and 8035 of Title 4, Division 11, Article 3 and Sections 8042 and 8043 of Title 4, Division 11, Article 4 of the California Code of Regulations.

#### **Informative Digest**

Existing law establishes the Authority to charge reasonable application and project fees to reimburse the authority for costs incurred in administering applications for financing pursuant to Section 44525 of the Health and Safety Code.

Under existing law, the Authority shall adopt regulations for the operation of the small business assistance funds, the amounts and any payment schedule or the fees, charges, or deposits, eligibility standards for small businesses desiring to use or benefit from the small business assistance funds, and other matters the authority determines to be necessary for the

establishment and maintenance of small business assistance funds. (Health and Safety Code, § 44548(a)(3))

The proposed amendments add a general fee category, amend the small business fund assistance fees and make clarifying changes to existing regulations. These amendments are the result of periodic evaluation of the regulations and issues encountered during specific loan transactions. The proposed amendments and objectives for each section are as follows:

Section 8034. Addition of a new annual fee category. Any bond issued that is not eligible for allocation of volume cap will be assessed a fee of one tenth of one percent (.001) of the face value of the bonds issued, and then an annual fee of five one-hundredths of one percent (.0005) of the outstanding balance yearly (minimum annual fee of \$1,000 and a maximum annual fee of \$75,000).

Section 8035. The proposed change to this section reduces the current maximum SBAF fee from one percent (.01) to sixty-six one-hundredths of one percent (.0066) of the face value of any tax exempt bonds issued.

Section 8042. Addition of a section defining the types of projects that small businesses will now be required to pay the annual fee under Section 8034 – General Fees.

Section 8043. Clarification of eligibility related to Section 8042. Projects submitted by eligible small businesses that are not eligible for volume cap allocation would be required to pay general fees, as outlined in Section 8034 (a).

#### **Other Matters Prescribed by Statutes Applicable to the Specific State Agency or to any Specific Regulation or Class of Regulations**

No other matters are prescribed by statute applicable to the Authority or to any specific regulation or class of regulation pursuant to Section 11346.1(b) or 11346.5(a)(4) of the Government Code pertaining to the Emergency Regulations or to the Authority.

#### **Mandate on Local Agencies or School Districts**

The Executive Director of the Authority has determined that the Emergency Regulations do not impose a mandate on local agencies or school districts.

#### **Fiscal Impact**

The Executive Director of the Authority has determined that the Emergency Regulations do not impose any additional cost or savings requiring reimbursement under Section 17500 et al of the Government Code, any other non-discretionary cost or savings to any local agency or any cost or savings in federal funding to the State. Pursuant to the State Administrative Manual

Section 6680, a Fiscal Impact Statement (Form 399) is submitted without the signature of a Project Budget Manager at the Department of Finance, as there are no fiscal impact disclosures required by State Administrative Manual Sections 6600-6670. There will be no cost or savings to any State Agency pursuant to Section 11346.1(b) or 11346.5(a)(6) Government Code.